

HOUSE BILL NO. 405

INTRODUCED BY M. REINHART

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRITERIA FOR LOCAL GOVERNMENT REVIEW OF PROPOSED SUBDIVISIONS; REQUIRING A SUBDIVIDER TO PROVIDE THE GOVERNING BODY WITH EVIDENCE THAT A PROPOSED SUBDIVISION IS DESIGNED TO MITIGATE CERTAIN ADVERSE IMPACTS; AND AMENDING SECTIONS 76-3-504 AND 76-3-608, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures ~~authorized under 76-3-608(4) and (5) that are indicated in evidence provided to the governing body under~~ 76-3-608(4) or required under 76-3-608(5) and (6). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

- 1 (i) the design and arrangement of lots, streets, and roads;
- 2 (ii) grading and drainage;
- 3 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
- 4 the:
- 5 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that
- 6 will create one or more parcels containing less than 20 acres; and
- 7 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
- 8 containing 20 acres or more and less than 160 acres; and
- 9 (iv) the location and installation of public utilities;
- 10 (h) provide procedures for the administration of the park and open-space requirements of this chapter;
- 11 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
- 12 local, state, and federal government identified during the preapplication consultation conducted pursuant to
- 13 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review
- 14 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and
- 15 the failure of any agency to complete a review of an application may not be a basis for rejection of the application
- 16 by the governing body.
- 17 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider
- 18 to:
- 19 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
- 20 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
- 21 a legal right to the water and reserve and sever any remaining surface water rights from the land;
- 22 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
- 23 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
- 24 administered through a single entity that specifies administration and the rights and responsibilities of landowners
- 25 within the subdivision who have a legal right and access to the water; or
- 26 (iii) reserve and sever all surface water rights from the land;
- 27 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in
- 28 the subdivision that:
- 29 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical
- 30 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for

1 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
2 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision
3 lots;

4 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance,
5 and inspection of the ditch; and

6 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
7 easement without the written permission of the ditch owner.

8 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

9 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
10 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
11 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;
12 or

13 (B) the water rights are removed or the process has been initiated to remove the water rights from the
14 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
15 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
16 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall
17 document that intent, when applicable, in agreements and legal documents for related sales transactions.

18 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
19 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
20 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
21 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
22 historic and legal rights;

23 (m) require the subdivider to describe, dimension, and show public utility easements in the subdivision
24 on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow
25 the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility
26 services within the subdivision.

27 (n) establish whether the governing body, its authorized agent or agency, or both will hold public
28 hearings;

29 (o) establish procedures describing how the governing body or its agent or agency will address
30 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 2. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter.

1 A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts
2 on educational services.

3 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as
4 applicable.

5 (3) A subdivision proposal must undergo review for the following primary criteria:

6 (a) except when the governing body has established an exemption pursuant to subsection ~~(6)~~ (7) of this
7 section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural
8 water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and
9 safety;

10 (b) compliance with:

11 (i) the survey requirements provided for in part 4 of this chapter;

12 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

13 (iii) the local subdivision review procedure provided for in this part;

14 (c) the provision of easements for the location and installation of any planned utilities; and

15 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the
16 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

17 (4) The subdivider shall provide the governing body with substantial credible evidence that the proposed
18 subdivision is designed to avoid or minimize potential adverse impacts identified through the review required
19 under subsection (3).

20 ~~(5)~~ (5) The governing body may require the subdivider to design the proposed subdivision to ~~reasonably~~
21 minimize ~~potentially significant~~ potential adverse impacts identified through the review required under subsection
22 (3). The governing body shall issue written findings to justify the ~~reasonable~~ mitigation required under this
23 subsection ~~(4)~~ (5).

24 ~~(5)(6)~~ (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under
25 subsection ~~(4)~~ (5), a governing body may not unreasonably restrict a landowner's ability to develop land, but it
26 is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable
27 and will preclude approval of the subdivision.

28 (b) When requiring mitigation under subsection ~~(4)~~ (5), a governing body shall consult with the subdivider
29 and shall give due weight and consideration to the expressed preference of the subdivider.

30 ~~(6)(7)~~ The governing body may exempt proposed subdivisions that are entirely within the boundaries of

1 designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have
2 been met:

3 (a) the governing body has adopted a growth policy pursuant to chapter 1 that:

4 (i) addresses the criteria in subsection (3)(a);

5 (ii) evaluates the impact of development on the criteria in subsection (3)(a);

6 (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

7 (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption
8 from review of the criteria in subsection (3)(a); and

9 (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

10 (i) apply to the entire area subject to the exemption; and

11 (ii) address the criteria in subsection (3)(a), as described in the growth policy.

12 ~~(7)~~(8) A governing body may conditionally approve or deny a proposed subdivision as a result of the
13 water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604
14 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing
15 subdivision, zoning, or other regulations that the governing body has the authority to enforce."

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